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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY-DOCKET NO.	CONFIRMATION NO.
09/817,956	03/27/2001	Biagio Ravo	2931-010557	1619

7590

05/20/2003

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EXAMINER

LAM, ANN Y

ART UNIT

PAPER NUMBER

1641

10

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/817,956

Applicant(s)

RAVO, BIAGIO

Examiner

Ann Y. Lam

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoon, 5,514,091, for the same reasons as described in Office action dated February 12, 2002.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoon, 5,514,091, in view of Evans et al., 4,600,015, for the same reasons as described in Office action dated February 12, 2002.

### ***Response to Arguments***

Applicant's arguments filed February 11, 2003 have been fully considered but they are not persuasive.

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Applicant argues that the claims require that the tube extends from a peripheral portion of the device between adjacent inflatable sections to a distal end of the body member wherein the tube is adapted to be selectively attached to a suction hose or a fluid supply source, see pages 3 and 4 of Applicant's arguments. Applicant points to reference number (38) in Figure 2 of Applicant's drawings as the claimed tube.

Examiner emphasizes that although tube (38) has an end portion that ends on the periphery of body member (32) at a position between two inflatable portions, as seen in Figure 2, Applicant's claims however do not require this configuration. Examiner emphasizes that Applicant only claims "at least one tube positioned between adjacent inflatable sections.....wherein the tube extends from a peripheral portion of the device between adjacent inflatable sections to a distal end of the body member..." see claim 1, line 9, for example. Thus, Examiner re-asserts that tube (120a, 120b) is positioned between adjacent inflatable sections and extends from a peripheral portion of the device as claimed.

Applicant also argues that the only embodiment in Yoon having at least three independent inflatable sections is found in Figure 20 of the Yoon patent, but that this embodiment does not have suction/fluid supply tubes between adjacent sections. In response, Examiner asserts that Yoon teaches that the inflatable members of his invention are selectively, individually inflatable, see column 3, lines 14-21. In any case, Figure 20 does disclose at least one tube between adjacent sections, for the same reason as described in the previous paragraph above.

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As to the dependent claims, Examiner reasserts that Yoon discloses the claimed limitations as described in the previous Office action.


As to claims 5, 8, 9 and 11, Examiner reasserts that it would have been obvious to use optical fibers to assess the surgical treatment as taught by Evans, see column 11, lines 49-68, and that such use of optical fibers is well known in the art.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on M-TH 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (703)305-3399. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

A.L.  
May 18, 2003

  
LONG V. LE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

05/18/03